UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12

CONTEMPORARY CARS, INC. d/b/a MERCEDES-BENZ OF ORLANDO and AUTONATION, INC., SINGLE AND JOINT EMPLOYERS	Cases 12-CA-26126 12-CA-26233 12-CA-26306 12-CA-26354
and	12-CA-26386 12-CA-26552
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO	

GENERAL COUNSEL'S OPPOSITION TO RESPONDENTS' MOTION FOR RECONSIDERATION OF THE BOARD'S ORDER DENYING MOTION FOR PARTIAL SUMMARY JUDGMENT

Counsel for the General Counsel opposes Respondent Contemporary Cars, Inc. d/b/a Mercedes-Benz of Orlando and AutoNation, Inc.'s Motion for Reconsideration of the Board's August 27, 2010, Order denying Respondents' motion for partial summary judgment.[1] Respondents' position is directly contrary to established Board law and is not supported by any legal authority. Sections IA to IH of this opposition set forth the procedural history of the instant cases, and the related representation and test of certification cases. General Counsel's argument is set forth in Sections IIA to IIE.

I. PROCEDURAL HISTORY

A. The related representation case

On October 3, 2008, the International Association of Machinists and Aerospace Workers, AFL-CIO (the Union) filed the petition in Case 12-RC-9344 seeking to represent a unit of service technicians (automobile mechanics) employed by Respondent Contemporary Cars,

[1] On September 17, 2010, NLRB Region 12 received a Motion for Reconsideration of the Board's August 23, 2010, Order in related Cases 12-CA-26377 and 12-RC-9344, filed by David A. Rosenfeld, Esq., Counsel for the Union, asserting that the Certification of Representative should be deemed valid as of the date it was issued by the Regional Director (February 11, 2009) rather than as of August 23, 2010, the date of the Board's Order. See discussion of the procedural history of Cases 12-RC-9344 and 12-CA-26377 infra, especially at Sections I, II and IV. The Union's motion appears to have been served on Counsel for Respondents, but contains no indication that it was served on the Board.

Inc. d/b/a Mercedes-Benz of Orlando (Respondent MBO). The Regional Director for Region 12 issued a Decision and Direction of Election on November 14, 2008, directing an election in the unit sought. On December 15, 2008, the two-member Board denied Respondent MBO's request for review of the Regional Director's Decision and Direction of Election. An election was held on December 16, 2008. The tally of ballots issued at the conclusion of the election showed that there were 16 votes for the Union, 14 votes against the Union, and 3 determinative challenged ballots.[2]

On January 15, 2009, the Regional Director issued a Supplemental Decision on Challenged Ballots, directing that the three challenged ballots be opened and counted. The Regional Director noted as follows: the pending unfair labor practice charge in Case 12-CA-26126 alleged that the three challenged voters had been unlawfully discharged by Respondent before the election; Respondent MBO contended that they were not eligible voters because their employment was terminated in order to cut costs and they had no reasonable expectancy of recall; and the Union contended that they were eligible to vote because their employment was unlawfully terminated. The Regional Director reasoned that: in view of the Union's two vote lead in the count as of that time, unless at least two challenged voters had cast ballots against the Union, the Union would have received a majority of the votes cast and would be entitled to be certified; and if at least two challenged voters cast ballots against the Union, the outcome of the election would still depend on of the alleged unlawful terminations of employment of the challenged voters in Case 12-CA-26126, because that would determine the eligibility of the challenged voters. The Regional Director noted that the three challenged voters had submitted waivers of the secrecy of their ballots and desired to have their ballots opened and counted, and decided that in these circumstances the challenged ballots should be opened and counted without waiting for the outcome of the pending charge alleging the unlawful termination of their employment, citing *Garrity Oil Company, Inc.*, 272 NLRB 158 (1984); *Premium Fine Coal, Inc.*,

[2] No objections to the election were filed.

262 NLRB 428 (1982); and *International Ladies' Garment Workers Union*, 137 NLRB 1681 (1962). Respondent MBO did not request review of the supplemental decision. The challenged ballots were opened and counted by the Regional office on February 10, 2009, in the presence of representatives of Respondent MBO and the Union. All three challenged voters cast ballots in favor of the Union, thus establishing that a majority of the valid votes cast were in favor of the Union whether or not any or all of the three challenged voters were ultimately determined to be eligible to vote. The Regional Director then certified the Union as the unit employees' collective bargaining representative on February 11, 2009.

B. The related test of certification case and the instant cases

Thereafter, Respondents failed and refused to recognize and bargain with the Union as the representative of the unit employees in order to contest the certification. On June 25, 2009, the Regional Director for Region 12 issued a Complaint in Case 12-CA-26377 (the test of certification case) alleging that Respondent MBO's conduct violated Section 8(a)(5) and (1) of the Act. Pursuant to a Motion for Summary Judgment filed by the General Counsel in Case 12-CA-26377, on August 28, 2009, the two-member Board issued a Decision and Order, reported at 354 NLRB No. 72, directing Respondent MBO to recognize and bargain with the Union. Respondent MBO appealed the Board's Decision and Order to the United States Court of Appeals for the District of Columbia Circuit.

On March 31, 2010, the Regional Director issued a Consolidated Complaint and Notice of Hearing in the instant cases, a copy of which is appended hereto as Attachment 1. Respondents each filed answers on April 14, 2010, and first amended answers on June 1, 2010. On June 8, 2010, the Regional Director issued an Amendment to Consolidated Complaint in the instant cases.[3]

[3] The Amendment to Consolidated Complaint does not contain any allegations at issue in Respondents' motion, and is not attached hereto.

Respondents each filed additional answers and amended answers, respectively, on June 9, 2010, and June 14, 2010. Copies of Respondent MBO's and Respondent AutoNation's amended answers dated June 14, 2010, are submitted herewith as Attachments 2 and 3.

C. The Supreme Court decision in *New Process Steel*

On June 18, 2010, the United States Supreme Court issued the decision in *New Process Steel, L.P. v. NLRB*, 564 U.S. 840 (2010), holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. In view of the *New Process Steel* decision, the Board then issued an order setting aside the two member Board's decision and order in the test of certification case reported at 354 NLRB No. 72, and retaining the case on its docket for further appropriate action.

D. Respondents' Motion for Partial Summary Judgment

On June 18, 2010, citing the issuance of *New Process Steel*, Respondents filed a Motion for Partial Summary Judgment with the Board.[4] Respondent asked the Board to summarily dismiss the allegations in the Consolidated Complaint concerning violations of Section 8(a)(5) of the Act set forth in paragraphs 9(a) through 9(c), 40(a), 40(b), 41(b), 41(c), 43(a) through 43(e), 45 through 48, and 51. A brief description of those allegations follows.

Paragraphs 9(a) through 9(c) allege the appropriate bargaining unit, the Union's majority status, and the Union's status as the exclusive collective-bargaining representative. Paragraphs 40(a) and 40(b) allege that on March 31, 2009, Respondents' supervisor and agent told employees that Respondents would not recognize the Union until they entered into a collective-bargaining agreement with the Union, and that they would not allow Union stewards to serve as employee representatives in meetings between Respondents and employees concerning

[4] Also, on June 18, 2010, Respondents filed an Emergency Motion for Continuance with the Associate Chief Administrative Law Judge, seeking a postponement of the June 21, 2010 hearing date in the instant cases. (The hearing had previously been postponed from May 3, 2010 to June 21, 2010 at Respondents' request.) The Associate Chief Administrative Law Judge granted the continuance pending the Board's consideration of the ramifications of *New Process Steel* on the test of certification case that would impact the Section 8(a)(5) issues in the instant cases.

disciplinary matters. Paragraphs 41(b)and 41(c) allege the discharge of employees Juan Cazorla, David Poppo, Tumshewar "John" Persaud and Larry Puzon in early April 2009.[5] Paragraphs paragraph 43(a) through (e) and 45 contain allegations of Respondent MBO's changes in skill rate performance reviews, wages, and work rules of unit employees without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct or with respect to the effects of this conduct. Paragraph 46 alleges that since on or about April 17, 2009, the Union, by certified letter of that date and by verbal request on or about May 6, 2009, has requested that Respondent MBO furnish the Union with information regarding benefits, wages, hours of work, age, and seniority of bargaining unit employees. Paragraph 47 alleges that the requested information is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative, and paragraph 48 alleges that since on or about April 17, 2010, Respondent MBO has failed and refused to furnish the Union with the requested information. Paragraph 51 alleges that by the conduct described in paragraphs 40(a), 40(b), 41(b), 41(c), 43(a) through 43(e), 45 and 48, Respondents violated Section 8(a)(1) and (5) of the Act.

The Consolidated Complaint, as amended, also alleges that Respondents committed numerous violations of Section 8(a)(1) and (3) of the Act.

In its most recent answer Respondent MBO admitted some of the allegations of the Consolidated Complaint that Respondents now seek to strike, as follows: the portion of paragraph 9(b) related to the Union's majority status in the unit described in the complaint;[6] all of paragraphs 41(b) and 41(c) which allege the discharges of employees Cazorla, Poppo, Persaud and Puzon; the portion of paragraph 45 alleging that those four employees were discharged without prior notice to the Union and without affording the Union an opportunity to

[5] Although the terminations of employment of these four employees are designated as discharges in the pleadings, during the investigation of these cases Respondents took the position that these employees were laid off because of an economically-driven reduction in force.

[6] In its answer to paragraph 9(b) Respondent MBO also asserts that the unit alleged is inappropriate.

bargain with respect to this conduct or with respect to the effects of this conduct;[7] and all of paragraphs 46 and 48 alleging the Union's information requests.[8] See Attachment 2 at paragraphs 9(b), 41(b), 41(c), 45, 46 and 48. Respondent AutoNation, which denies the complaint allegations that Respondent AutoNation and Respondent MBO are single and/or joint employers, asserts that most of allegations that are the subject of the instant motion do not pertain to it. See Attachment 3.

On June 25, 2010, General Counsel filed an Opposition to Respondents' Motion for Partial Summary Judgment.

E. The Board's post - *New Process Steel* order in the test of certification and representation cases

On August 23, 2010, a three member panel of the Board issued a Decision and Order in the test of certification case, reported at 355 NLRB No. 113. The Board found as follows: there was no merit to Respondent MBO's request for review in Case 12-RC-9344; the timing of the election was not affected by the two member Board's issuance of the denial of the request for review; the Regional Director's supplemental decision to open and count the challenged ballots in Case 12-RC-9344 was, at worst, harmless error which did not affect the tally of ballots; there was no question that a majority of valid ballots was cast for the Union; and the Regional Director's Certification of Representative issued to the Union based on that tally was valid. The Board further stated that "to the extent the Certification of Representative may be significant in future proceedings, we will deem the Certification of Representative to have issued as of the date of this decision." 355 NLRB No. 113, slip. op. at p.2 and fn.4. The Board granted General Counsel's motion for summary judgment in the test of certification case, and to the extent consistent with its Decision and Order of that date, adopted the findings of fact, conclusions of law, remedy and order reported at 354 NLRB No. 72 and incorporated that order by reference.

[7] In answering paragraph 45 Respondent MBO also asserted that it had no duty to bargain.
[8] In answering paragraphs 46 and 48 Respondent MBO also asserted that it had no duty to provide the requested information to the Union.

355 NLRB No. 113, slip. op. at 2 and fn.5. Thus, the Board found that Respondent MBO violated Section 8(a)(1) and (5) of the Act by failing and refusing to recognize and bargain with the Union, and ordered Respondent to recognize and bargain with the Union as the exclusive bargaining representative of the unit employees. Id.; 354 NLRB No. 72, slip op. at 2.

F. The Board Order denying Respondents' Motion for Partial Summary Judgment

As noted above, on August 27, 2010, the Board issued an Order denying Respondents' motion for partial summary judgment in the instant cases as lacking in merit, citing its aforementioned Decision and Order in the test of certification and representation cases, reported at 355 NLRB No. 113, which requires Respondent MBO to recognize and bargain with the Union.

G. The rescheduling of the hearing in the instant cases

On August 27, 2010, the Board issued a second Order in the instant cases, remanding them to the Associate Chief Administrative Law Judge to resume the hearing. On September 2, 2010, an Order was issued rescheduling the hearing to November 8, 2010.

H. Respondents' Motion for Reconsideration

On September 15, 2010, Respondents filed the Motion for Reconsideration in this matter. Respondents contend that because the Board's August 23, 2010, Order in the related test of certification and representation cases states that the certification of the Union is deemed to be effective on August 23, 2010, Respondents had no duty to bargain with the Union prior to that date, including with respect to "such issues as layoffs (which occurred in April 2009) and by refusing to furnish information for bargaining (also in April 2009)..." . Respondents apparently continue to seek summary judgment as to all of the paragraphs of the Consolidated Complaint listed in their original motion filed on June 18, 2010: paragraphs 9(a) through (c), 40(a), 40(b), 41(b), 41(c), 43(a) through 43(e), 45 through 48, and 51.

Respondents cite no legal authority in support of the motion for reconsideration.

II. THE ALLEGATIONS AS TO WHICH RESPONDENTS SEEK PARTIAL SUMMARY JUDGMENT RAISE SUBSTANTIAL AND MATERIAL ISSUES OF FACT AND ARE BASED ON LEGAL THEORIES THAT WITHSTAND RESPONDENTS' MOTION. ACCORDINGLY, RESPONDENTS' MOTION FOR RECONSIDERATION SHOULD BE DENIED IN ITS ENTIRETY AND THE INSTANT CASE SHOULD PROCEED TO A HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE ON ALL ALLEGATIONS IN THE CONSOLIDATED COMPLAINT, AS AMENDED, ON NOVEMBER 8, 2010.

A. Respondents' motion should be denied as to the allegations of unilateral changes in terms and conditions of employment.

Contrary to Respondents' contention, it is well established that an employer's bargaining obligation does not first arise on the date that the Board issues a certification of bargaining representative. Rather, the employer's bargaining obligation attaches immediately after the election if it is later determined that the election results and validity warrant the issuance of a certification of representative. Therefore, an employer acts at its peril if it makes changes in terms and conditions of employment without consulting the union during the period between the election and the issuance of the certification of representative to the union. The Board explained this doctrine in *Mike O'Connor Chevrolet*, 209 NLRB 701, 703 (1974), enf. denied on other grounds 512 F.2d 684 (8th Cir. 1975):

> The Board has long held that, absent compelling economic considerations for doing so, an employer acts at its peril in making changes in terms and conditions of employment during the period that objections to an election are pending and the final determination has not yet been made.10 And where the final determination on the objections results in the certification of a representative, the Board has held the employer to have violated Section 8(a)(5) and (1) for having made such unilateral changes.11 Such changes have the effect of bypassing, undercutting, and undermining the union's status as the statutory representative of the employees in the event a certification is issued. To hold otherwise would allow an employer to box the union in on future bargaining positions by implementing changes of policy and practice during the period when objections or determinative challenges to the election are pending. Accordingly, since we have already determined in this case that the Union should be certified, we find, contrary to the Administrative Law Judge, that Respondent was not free to make changes in terms and conditions of employment during the pendency of postelection objections and challenges without first consulting with the Union.

209 NLRB 701, 703 (1974) (footnotes omitted). The Board continues to follow this principle. *Bloomfield Healthcare Center,* 352 NLRB 252 (2008), enfd. 188 L.R.R.M. 2393 (2d Cir. April 10, 2010).

Based on this doctrine, the certification of the Union merely confirmed and formalized the Union's status as the bargaining representative of Respondent MBO's unit employees, and Respondent MBO's bargaining obligation attached on December 16, 2008, when the valid election was conducted, even though the election result was not certain until February 10, 2009, when the three challenged ballots were opened and counted, even though the Regional Director did not issue the certification of representative to the Union until February 11, 2009, and even though the Board finds the Regional Director's certification to be have been valid and deems it to have issued as of August 23, 2010.

The allegations in paragraphs 41(b), 41(c), 43(a) through 43(e), and 45 of the Consolidated Complaint, and the corresponding Section 8(a)(5) conclusions in paragraph 51 of the Consolidated Complaint, allege unilateral changes in terms and conditions of employment of unit employees. If proven, those allegations will establish that Respondent MBO violated Section 8(a)(5) of the Act because they were made after the election on December 16, 2008. Accordingly, the motion should be denied as to those allegations.

B. Respondents' motion should be denied as to the alleged failure and refusal to furnish information to the Union.

As alleged in paragraph 47 of the Consolidated Complaint, the requested information is necessary for and relevant to the Union's performance of its duties as the employees' collective-bargaining representative. The information is presumptively relevant because it concerns the wages, hours of work, and other terms and conditions of employment of the unit employees. The following two arguments further establish a substantial basis for the denial of Respondents' motion for reconsideration with respect to the allegations that Respondent MBO has failed and refused to furnish the requested information to the Union in violation of Section 8(a)(5) and (1) of the Act.

First, General Counsel submits that notwithstanding the fact that the Board deemed the certification of the Union to be effective on August 23, 2010, Respondent MBO violated Section

8(a)(5) and (1) of the Act by refusing to furnish the Union with the information ever since it received the initial request from the Union on or about April 17, 2009. The Union was entitled to the requested information as of that time for the purposes of representing employees in day-to-day matters with respect to their terms and conditions of employment, monitoring whether Respondent was making changes in terms and conditions of employment with respect to which the Union was entitled to be consulted, preparing for such potential consultations, and preparing for negotiations for a collective-bargaining agreement.

Second, the Consolidated Complaint does not merely allege that Respondent MBO failed and refused to furnish the requested information "in" April 2009, as Respondents contend. Rather, paragraph 46 alleges that the Union has requested the information "since" April 17, 2009, and paragraph 48 alleges that Respondent MBO has failed and refused to furnish the requested information to the Union "since" April 17, 2009. Thus, both the request and refusal to furnish information are alleged to be continuing in nature, including during the period after August 23, 2010, when the Board deemed the certification to have been issued. General Counsel expects to establish that the Union has never withdrawn its information requests and remains in need of the requested information for bargaining purposes, especially now that the certification is deemed to have issued. Further, Respondent MBO does not assert that it has provided the information to the Union, even since August 23, 2010, and it appears that even if a renewed request is made by the Union, Respondent will still refuse to provide the information to the Union.

For these reasons, Respondents' motion should be denied with respect to paragraphs 46 to 48 of the Consolidated Complaint, and the corresponding Section 8(a)(5) conclusion alleged in paragraph 51, alleging the failure and refusal to furnish information requested by the Union.

C. Respondents' motion should be denied because certain of the allegations it seeks to strike not only support the conclusion that Respondent violated Section 8(a)(5) of the Act, but also support the conclusion that Respondent separately violated Section 8(a)(1) and (3) of the Act

Paragraphs 40(a) and 40(b) of the Consolidated Complaint allege that on March 31, 2009, Respondents told employees they would not recognize the Union until they entered into a collective-bargaining agreement with the Union, and that they would not allow Union stewards to serve as employee representatives in meetings between Respondents and employees concerning disciplinary matters. Paragraphs 40(a) and 40(b) are alleged as both independent violations of Section 8(a)(1) of the Act and as refusals to bargain that violate Section 8(a)(5) and (1) of the Act. See paragraphs 49 and 51 of Attachment 1. In addition, the discharges alleged in paragraphs 41(b) and 41(c) of the Consolidated Complaint, if proven in conjunction with paragraph 41(d), will establish violations of Section 8(a)(3) of the Act, as well as establishing violations of Section 8(a)(5) of the Act. See paragraphs 50 and 51 of Attachment 1. The date of the Union's certification is irrelevant to the Section 8(a)(1) and (3) issues raised by paragraphs 40(a), 40(b), 41(b) and 41(c) of the Consolidated Complaint. Thus, Respondents' motion for reconsideration should be denied as to those paragraphs on that additional basis.

D. Respondents' motion should be denied as to the allegations of paragraphs 9(a) through (c) of the Consolidated Complaint because the Board has already made finding of fact and conclusions of law establishing those allegations.

As to paragraphs 9(a) through 9(c) of the Consolidated Complaint, alleging the appropriate unit, majority status of the Union, and exclusive representative status of the Union, Respondents' motion should be denied because the Board has already made findings of fact and conclusions of law establishing those allegations in its Order of August 23, 2010 in the test of certification case.

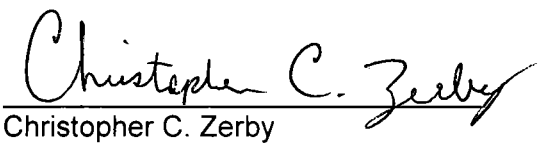
E. Conclusion

The violations of Section 8(a)(5) and (1) of the Act alleged in the Consolidated Complaint raise substantial issues of fact and are based on legal theories that withstand Respondents'

motion, and can best be decided by a hearing. Respondents' assertion that these allegations should be summarily dismissed because the allegedly unlawful conduct occurred before August 23, 2010, the date the Board ultimately deemed the certification of the Union to be effective, is without merit. For the above reasons, Counsel for the General Counsel respectfully urges the Board to deny Respondents' motion for partial summary judgment in its entirety so that all of the allegations in the Consolidated Complaint, as amended, may proceed to the hearing before an administrative law judge as scheduled, on November 8, 2010.

Dated at Tampa, Florida, this 20th day of September 2010.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that GENERAL COUNSEL'S OPPOSITION TO RESPONDENTS' MOTION FOR RECONSIDERATION OF THE BOARD'S ORDER DENYING MOTION FOR PARTIAL SUMMARY JUDGMENT was filed electronically with the Board and by electronic mail to the parties named below on September 20, 2010.

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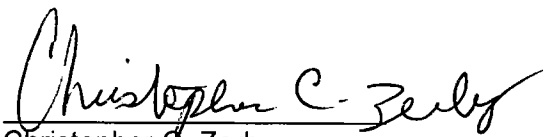

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12

CONTEMPORARY CARS, INC.
d/b/a MERCEDES-BENZ OF ORLANDO
and AUTONATION, INC.,
SINGLE AND JOINT EMPLOYERS

and

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL-CIO

Cases 12-CA-26126
12-CA-26233
12-CA-26306
12-CA-26354
12-CA-26552

ORDER CONSOLIDATING CASES,
CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

International Association of Machinists and Aerospace Workers, AFL-CIO, herein called the Union, has charged in Cases 12-CA-26126, 12-CA-26233, 12-CA-26306, 12-CA-26354 and 12-CA-26552 that Contemporary Cars, Inc. d/b/a Mercedes-Benz of Orlando, herein individually called Respondent MBO, and AutoNation, Inc., herein individually called Respondent AutoNation, and herein collectively called Respondents, have been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. § 151 et seq., herein called the Act. Based thereon, and in order to avoid unnecessary costs or delay, the General Counsel, by the undersigned, pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, ORDERS that these cases are consolidated.

These cases having been consolidated, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, issues this Consolidated Complaint and Notice of Hearing and alleges as follows:

1.

(a) The original charge in Case 12-CA-26126 was filed by the Union on December 11, 2008, and a copy was served by regular mail on Respondent MBO on December 12, 2008.

(b) The first amended charge in Case 12-CA-26126 was filed by the Union on January 7, 2009, and a copy was served by regular mail on Respondent MBO on January 8, 2009.

(c) The second amended charge in Case 12-CA-26126 was filed by the Union on February 17, 2009, and a copy was served by regular mail on Respondents on February 17, 2009.

(d) The third amended charge in Case 12-CA-26126 was filed by the Union on June 8, 2009, and a copy was served by regular mail on Respondents on June 8, 2009.

(e) The fourth amended charge in Case 12-CA-26126 was filed by the Union on August 20, 2009, and a copy was served by regular mail on Respondents on August 21, 2009.

(f) The fifth amended charge in Case 12-CA-26126 was filed by the Union on March 22, 2010, and a copy was served by regular mail on Respondents on March 23, 2010.

(g) The original charge in Case 12-CA-26233 was filed by the Union on March 16, 2009, and a copy was served by regular mail on Respondents on March 17, 2009.

(h) The amended charge in Case 12-CA-26233 was filed by the Union on March 22, 2010, and a copy was served by regular mail on Respondents on March 23, 2010.

(i) The original charge in Case 12-CA-26306 was filed by the Union on April 13, 2009, and a copy was served by regular mail on Respondents on April 14, 2009.

(j) The first amended charge in Case 12-CA-26306 was filed by the Union on June 12, 2009, and a copy was served by regular mail on Respondents on June 12, 2009.

(k) The second amended charge in Case 12-CA-26306 was filed by the Union on June 19, 2009, and a copy was served by regular mail on Respondents on June 22, 2009.

(l) The original charge in Case 12-CA-26354 was filed by the Union on May 29, 2009, and a copy was served by regular mail on Respondents on June 2, 2009.

(m) The amended charge in Case 12-CA-26354 was filed by the Union on June 12, 2009, and a copy was served by regular mail on Respondents on June 12, 2009.

(n) The charge in Case 12-CA-26552 was filed by the Union on November 19, 2009, and a copy was served by regular mail on Respondents on November 19, 2009.

2.

(a) At all material times, Respondent MBO, a Florida corporation with an office and place of business located in Maitland, Florida, herein called its Maitland, Florida facility, has operated an automobile dealership and has been engaged in the sale, leasing, financing, repair and service of new and used vehicles, including automobiles, sports utility vehicles, vans and trucks, and in the sale of vehicle parts and accessories.

(b) During the past 12 months, Respondent MBO, in conducting its business operations described above in paragraph 2(a), derived gross revenues valued in excess of $500,000, and purchased and received at its Maitland, Florida facility, goods valued in excess of $50,000 directly from points located outside the State of Florida.

(c) At all material times, Respondent MBO has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3.

(a) At all material times, Respondent AutoNation, a Florida corporation with its corporate headquarters located in Fort Lauderdale, Florida, herein called its Fort Lauderdale, Florida corporate headquarters, and automobile dealerships located throughout the United States, has been engaged in the sale, leasing, financing, repair and service of new and used vehicles, including automobiles, sports utility vehicles, vans and trucks, and in the sale of vehicle parts and accessories.

(b) During the past 12 months, Respondent AutoNation, in conducting its business operations described above in paragraph 3(a), derived gross revenues valued in excess of $500,000, and purchased and received at its Fort Lauderdale, Florida facility, goods and materials valued in excess of $50,000 directly from points located outside the State of Florida.

(c) At all material times, Respondent AutoNation has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

4.

(a) At all material times, Respondent MBO and Respondent AutoNation have been affiliated business enterprises with common officers, ownership, directors, management and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as single-integrated business enterprises.

(b) Based on the operations described above in paragraph 4(a), Respondent MBO and Respondent AutoNation constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

5.

(a) At all material times, Respondent MBO and Respondent AutoNation have been parties to a franchise agreement, pursuant to which they jointly engage in the leasing, financing, repair and service of new and used vehicles, including automobiles, sports utility vehicles, vans and trucks, and in the sale of vehicle parts and accessories.

(b) At all material times, Respondent AutoNation has possessed control over the labor relations policy of Respondent MBO, exercised control over the labor relations policy of Respondent MBO, and administered a common labor policy with Respondent MBO for the employees of Respondent MBO.

(c) At all material times, Respondent MBO and Respondent AutoNation have been joint employers of the employees of Respondent MBO.

6.

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

7.

(a) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondents within the meaning of Section 2(11) of the Act and agents of Respondents within the meaning of Section 2(13) of the Act:

Clarence "Bob" Berryhill	-	General Manager of Respondent MBO
Bibi Bickram	-	Human Resource Specialist of Respondent AutoNation
Art Bullock	-	Service Director of Respondent MBO
Pete DeVita	-	Market President of Respondent AutoNation for Market 4 (Orlando and Jacksonville, Florida)
Bruce Makin	-	Team Leader of Respondent MBO
Maia Menendez	-	Service Manager of Respondent MBO
Charles Miller	-	Parts Director and Acting Service Director of Respondent MBO

(b) At all material times until on or about December 31, 2009, Roberta "Bobbie" Bonavia held the position of Human Resources Director of Respondent AutoNation for its Florida Region and was a supervisor of Respondents within the meaning of Section 2(11) of the Act and an agent of Respondents within the meaning of Section 2(13) of the Act.

(c) At all material times until on or about a date in early to mid-December 2008, a more precise date being presently unknown to the General Counsel, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondents within the meaning of Section 2(11) of the Act and agents of Respondents within the meaning of Section 2(13) of the Act:

Andre Grobler	-	Team Leader of Respondent MBO
Oudit Manbahal	-	Team Leader of Respondent MBO

(d) At all material times since on or about a date in early to mid-December 2008, a more precise date being presently unknown to the General Counsel, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondents within the meaning of Section 2(11) of the Act and agents of Respondents within the meaning of Section 2(13) of the Act:

Alex Aviles	-	Team Leader of Respondent MBO
Rex Strong	-	Team Leader of Respondent MBO

8.

At all material times until on or about April 4, 2009, James Weiss held the position of Service Technician of Respondent MBO and was an agent of Respondents within the meaning of Section 2(13) of the Act.

9.

(a) The following employees of Respondent MBO, hereinafter called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time Mercedes-Benz service technicians, employed by Respondent MBO at its facility at 810 North Orlando Avenue, Maitland, Florida, excluding all other employees, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

(b) On December 16, 2008, a majority of the Unit designated and selected the Union as their representative for the purposes of collective bargaining with Respondent MBO in a representation election conducted by the Board in Case 12-RC-9344, and, on February 11, 2009, the Union was certified as the exclusive collective-bargaining representative of the Unit.

(c) At all times since December 16, 2008, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

(d) Based on the Union's unfair labor practice charge against Respondent MBO in Case 12-CA-26377, on August 28, 2009, the Board issued a Decision and Order, reported at 354

NLRB No. 72, finding that Respondent MBO violated Section 8(a)(1) and (5) of the Act by refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

(e) Respondent MBO's appeal of the Board Order described above in paragraph 9(d) is pending before the United States Court of Appeals for the District of Columbia Circuit.

10.

Since on or about July 8, 2008, Respondents, by issuing the AutoNation Associate Handbook to their employees employed at Respondent MBO's Maitland, Florida facility and at all of Respondent AutoNation's other automobile dealerships in the United States, has promulgated and maintained a no-solicitation rule stating in relevant part, "we prohibit solicitation by an associate of another associate while either of you is on company property."

11.

On or about dates in late July 2008 and August 2008, more precise dates being presently unknown to the General Counsel, Respondents, by Andre Grobler, at Respondent MBO's Maitland, Florida facility, created the impression of surveillance of employees' union activities.

12.

On or about September 25, 2008, Respondents, by Clarence "Bob" Berryhill, at Respondent MBO's Maitland, Florida facility, solicited grievances from employees and impliedly promised to remedy them in order to induce employees to abandon their support for the Union.

13.

On or about October 3, 2008, Respondents, by Clarence "Bob" Berryhill, at Respondent MBO's Maitland, Florida facility:

(a) Interrogated employees about their union activities and sympathies.

(b) Solicited employees to urge other employees to reject the Union.

14.

On or about dates in early October 2008 through December 2008, more precise dates being presently unknown to the General Counsel, Respondents, by Andre Grobler, at Respondent MBO's Maitland, Florida facility, interrogated employees about their union activities.

15.

On or about October 9, 2008, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility:

(a) Interrogated employees about their union sympathies and about the union sympathies of other employees.

(b) Solicited employees to help Respondent discharge employees who supported the Union.

(c) Threatened to discharge and blackball employees who supported the Union.

(d) Told employees that it would be futile to select the Union as their collective-bargaining representative.

(e) Threatened employees with a wage freeze and stricter enforcement of work rules if they selected the Union as their collective-bargaining representative.

(f) Created the impression of surveillance of employees' union activities.

16.

On or about October 9, 2008, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility, told employees that it would be futile to select the Union as their collective-bargaining representative.

17.

On or about October 10, 2008, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility:

(a) Told employees that it would be futile to select the Union as their collective-bargaining representative.

(b) Threatened employees with blacklisting if they joined or supported the Union.

(c) Solicited employees' grievances and impliedly promised to remedy them in order to induce employees to abandon their support for the Union.

(d) Threatened employees with loss of ice cream and various other benefits if they joined or supported the Union.

18.

On or about October 17, 2008, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility:

(a) Told employees that it would be futile to select the Union as their collective-bargaining representative.

(b) Solicited employees' grievances and impliedly promised to remedy them in order to induce employees to abandon their support for the Union.

19.

On or about October 30, 2008, on or about other dates in November 2008, more precise dates being presently unknown to the General Counsel, and on or about December 10, 2008, Respondents, by Clarence, "Bob" Berryhill, at Respondent MBO's Maitland, Florida facility, interrogated employees about the union sympathies of other employees.

20.

On or about October 30, 2008, Respondents, by their agent, and by Clarence "Bob" Berryhill, at Respondent MBO's Maitland, Florida facility, solicited an employee to go to a Union meeting to learn about employees' grievances and to report them to the Respondents.

21.

On or about dates from late October 2008 through mid-November 2008, more precise dates being presently unknown to the General Counsel, Respondents, by James Weiss, at Respondent MBO's Maitland, Florida facility, interrogated employees about their union activities and sympathies.

22.

On or dates in November 2008, including on or about November 25, 2008, more precise dates being presently unknown to the General Counsel, and on or about December 2, 2008 and December 15, 2008, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility, interrogated employees about the union sympathies of other employees.

23.

On or about a date in November 2008, a more precise date being presently unknown to the General Counsel, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility:

(a) Promised to redress employees' grievances in order to induce employees to abandon their support for the Union.

(b) Threatened employees with loss of jobs if they selected the Union as their collective-bargaining representative.

24.

On or about a date in mid-November 2008, a more precise date being presently unknown to the General Counsel, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility:

(a) Threatened employees with discharge if they engaged in union activities.

(b) Told employees it would be futile to select the Union as their collective-bargaining representative.

25.

In or about late November 2008 or early December 2008, a more precise date being presently unknown to the General Counsel, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility, interrogated employees about their union sympathies.

26.

On or about November 29, 2008, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility:

(a) Asked employees to prepare a petition opposing the selection of the Union as the employees' collective-bargaining representative.

(b) Asked employees to solicit other employees to sign a petition opposing the selection of the Union as the employees' collective-bargaining representative.

(c) Threatened to blackball employees who supported the Union.

27.

On or about December 4, 2008, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility, asked employees to solicit other employees to sign a petition opposing representation by the Union.

28.

On or about dates in early December 2008, more precise dates being presently unknown to the General Counsel, Respondents, by James Weiss, at Respondent MBO's Maitland, Florida facility, circulated a petition against the Union among employees and solicited employees to sign the petition.

29.

On or about dates in early to mid-December 2008, more precise dates being presently unknown to the General Counsel, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility, told employees that their grievances had been adjusted by the demotion of Andre Grobler and Oudit Manbahal, in order to induce employees to abandon their support for the Union.

30.

On or about December 9, 2008, Respondents, by Clarence "Bob" Berryhill, at Respondent MBO's Maitland, Florida facility, told employees that their grievances had been adjusted by the demotion of Andre Grobler and Oudit Manbahal from their team leader

positions, and by the replacement of Andre Grobler and Oudit Manbahal as team leaders by Alex Aviles and Rex Strong, in order to induce employees to abandon their support for the Union.

31.

On or about December 16, 2008, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility:

(a) Interrogated employees about the union sympathies of employees.

(b) Interrogated employees about whether employees had voted in the secret ballot election conducted by the Board.

(c) Threatened employees with closer supervision because they selected the Union as their collective-bargaining representative.

(d) Informed employees that it was futile for them to select the Union as their collective-bargaining representative.

(e) Created the impression of surveillance of employees' union activities.

(f) Threatened to discharge employees because they selected the Union as their collective-bargaining representative.

32.

On or about December 19, 2008, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility:

(a) Threatened to discharge employees because they selected the Union as their collective-bargaining representative.

(b) Informed employees that it was futile for them to select the Union as their collective-bargaining representative.

33.

On or about dates from mid-December 2008 through mid-January 2009, and on or about January 11, 2009, more precise dates being presently unknown to the General Counsel,

Respondents, by Clarence "Bob" Berryhill, at Respondent MBO's Maitland, Florida facility, threatened employees with discharge because of their union activities and sympathies.

34.

On or about a date in early January 2009, a more precise date being presently unknown to the General Counsel, Respondents, by Charles Miller, at Respondent MBO's Maitland, Florida facility, threatened to demote employees because of their union sympathies and activities, and promised to promote employees because they oppose the Union.

35.

On or about January 20, 2009, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility, threatened employees with stricter enforcement of work rules because they selected the Union as their bargaining representative.

36.

On or about dates in late January 2009 or early February 2009, more precise dates being presently unknown to the General Counsel, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility:

(a) Threatened to discharge employees because of their union activities and sympathies.

(b) Promised employees promotions if they made claims of misconduct by other employees who supported the Union.

37.

On or about a date in early March 2009, a more precise date being presently unknown to the General Counsel, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility, threatened employees with unspecified reprisals if they cooperated in the Board's investigation of unfair labor practice charges against Respondents.

38.

In or about mid-March 2009, a more precise date being presently unknown to the General Counsel, Respondents, by Clarence "Bob" Berryhill, at Respondent MBO's Maitland, Florida facility, solicited employees to make claims of misconduct against other employees because of the other employees' support for the Union.

39.

On or about February 1, 2009, Respondents stopped providing ice cream to employees in the Unit pursuant to their threat described above in paragraph 17(d).

40.

On or about March 31, 2009, Respondents, by Clarence "Bob" Berryhill, at Respondent MBO's Maitland, Florida facility:

(a) Told employees that Respondents would not recognize the Union as the collective-bargaining representative of the Unit until Respondents and the Union entered into a collective-bargaining agreement.

(b) Told employees that Respondents would not allow Union stewards to serve as representatives of employees in the Unit in meetings between Respondents and employees in the Unit concerning disciplinary matters.

41.

(a) On or about December 8, 2008, Respondents discharged their employee, Anthony Roberts.

(b) On or about April 2, 2009, Respondents discharged Juan Cazorla.

(c) On or about April 3, 2009, Respondents discharged David Poppo, Tumeshwar "John" Persaud and Larry Puzon.

(d) Respondents engaged in the conduct described above in paragraphs 41(a), 41(b) and 41(c) because the named employees and other employees of Respondents joined and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

42.

(a) On or about dates in August and September 2009, and on or about October 2, 2009, more precise dates being presently unknown to the General Counsel, Respondents' employee and the Union's shop steward, Dean Catalano engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection and concertedly complained to Respondents concerning wages, hours, and working conditions, by demanding sanitary working conditions and training concerning sanitary working conditions.

(b) On or about October 13, 2009, Respondents issued a "documented coaching" discipline to their employee, Dean Catalano.

(c) Respondents engaged in the conduct described above in paragraph 42(b) because Dean Catalano engaged in concerted activities described above in paragraph 42(a) and because he joined and assisted the Union, and to discourage employees from engaging in these activities.

43.

(a) On or about January 23, 2009, and May 22, 2009, Respondents, by Alex Aviles, at Respondent MBO's Maitland, Florida facility, told employees that, because of the Union, Respondent MBO had not conducted employee skill rate reviews, which Respondent MBO uses to determine wage increases for Unit employees.

(b) From on or about a date in January 2009 until on or about a date in August 2009, more precise dates being presently unknown to the General Counsel, Respondent MBO unilaterally suspended the issuance of semi-annual skill rate performance reviews and wage increases based on those performance reviews for Unit employees on Respondent MBO's "red team."

(c) From on or about a date in January 2009 until on or about a date in October 2009, more precise dates being presently unknown to the General Counsel, Respondent MBO unilaterally suspended the issuance of semi-annual skill rate performance reviews and wage

increases based on those performance reviews for Unit employees on Respondent MBO's "gold team" and "green team."

(d) On or about February 16, 2009, Respondent MBO reduced the wages that Unit employees are paid for completing pre-paid maintenance package services provided by Respondent MBO pursuant to the AutoNation vehicle care program.

(e) On or about a date in April 2009, a more precise date being presently unknown to the General Counsel, Respondent MBO implemented a new rule, announced in a letter dated February 18, 2009, requiring that Unit employees will be charged for damages to vehicles, and since that date, Respondent MBO has maintained and enforced that rule.

44.

The subjects set forth above in paragraphs 41(b), 41(c), and 43(a) through 43(e) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for purposes of collective bargaining.

45.

Respondent MBO engaged in the conduct described above in paragraphs 41(b), 41(c), and 43(a) through 43(e) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent MBO with respect to this conduct or with respect to the effects of this conduct, including Respondents' failure to pay severance pay to the employees named above in paragraphs 41(b) and 41(c).

46.

Since on or about April 17, 2009, the Union, by certified mail letter to Respondent MBO and Respondent AutoNation dated April 17, 2009, and by verbal request on or about May 6, 2009, has requested that Respondent MBO furnish the Union with the following information:

I. Current data and data for the prior three (3) years showing:

a. A breakdown for any insurance premiums (such as medical, dental, vision, life, accident, etc.) by type of coverage (such as single, one dependent, family, etc.) and carrier, including details on per employee premium costs (or premium equivalent for self-insured plans), number of

employees by type of coverage, and any employee-share of these insurance premiums

b. Information by type of coverage, carrier, costs and retiree-share of costs for any insurance for retirees

c. C.O.B.R.A. rates for medical, prescription drug, dental, and vision insurance

II. A current detailed breakdown, by bargaining unit employee(s), showing the following:

a. Pay/occupation grade, or classification level

b. Flat Rate Hour pay rate for each technician

c. Straight-time hourly rate (if applicable)

d. How many hours each tech worked per calendar year

e. Shift primarily assigned to

f. Age or date of birth

g. Seniority or date of hire

III. For the entire bargaining unit:

a. The current average hourly rate

b. Number of employees and at which level of the vacation schedule they reside

c. Average number of days used per bargaining unit member for paid sick leave, paid personal days, paid jury duty, paid bereavement leave, paid military leave, and any other types of paid leave during the most recent year (calendar, fiscal or 12-month period)

d. Average annual cost to the employer per employee for pension, health care, life insurance, accidental death & dismemberment, and every other type of insurance or benefit (please indicate what time period this data is for)

e. Average hours of overtime worked per week per bargaining unit member

f. Additional compensation for employees with 20-25 years employment

IV. For any pension, savings or stock plan:

a. Form 5500 and all supplements for the past three (3) years

b. Annual reports and actuarial reports for the past three (3) years

c. The most current Summary Plan Description (SPD) and Summary Material Modification (SMM)

e. For voluntary participation all information for contribution plans, such as 401(k) plans, the annual average for the past three (3) years of growth or decline:

i. The number of bargaining unit members participating

ii. The average contribution made by these participants

iii The number of these participants making the maximum contributions

iv. The average employer match/contribution for these participants

v. The average account balance

vi. The number of these participants with loans from the plan

47.

The information requested by the Union, as described above in paragraph 46, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

48.

Since on or about April 17, 2009, as confirmed in a letter to the Union dated June 4, 2009, Respondent MBO has failed and refused to provide the Union with the information requested by it as described above in paragraph 46.

49.

By the conduct described above in paragraphs 10 through 12, 13(a), 13(b), 14, 15(a) through 15(f), 16, 17(a) through 17(d), 18(a), 18(b), 19 through 22, 23(a), 23(b), 24(a), 24(b), 25, 26(a) through 26(c), 27 through 30, 31(a) through 31(f), 32(a), 32(b), 33 through 35, 36(a), 36(b), 37 through 39, 40(a), 40(b), 42(b), 42(c), and 43(a), Respondents have been interfering with, restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

50.

By the conduct described above in paragraph 41(a) through 41(d), 42(b) and 42(c), Respondents have been discriminating in regard to the hire or tenure or terms or conditions of employment of their employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(1) and (3) of the Act.

51.

By the conduct described above in paragraphs 40(a), 40(b), 41(b), 41(c), 43(a) through 43(e), 45 and 48, Respondents have been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of their employees, in violation of Section 8(a)(1) and (5) of the Act.

52.

The unfair labor practices of Respondents described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above, the General Counsel seeks an Order providing that Respondents are liable to make whole the employees named above in paragraphs 41(a) through 41(c) for any loss of earnings they suffered by reason of their unlawful discharges by Respondents, and to make whole all of the employees in the Unit for any loss of earnings they suffered by reason of Respondents' conduct described above in paragraphs 41(b), 41(c), 43(a) through 43(e) and 45, by payment of backpay plus quarterly compounded interest. The General Counsel further seeks an Order requiring, in addition to the posting of the notice by Respondents at Respondent MBO's facility, that Respondents e-mail the notice to employees employed at Respondent MBO's Maitland, Florida facility consistent with Respondent MBO's normal method of communicating with employees. The General Counsel further seeks an Order requiring Respondents to remedy the unfair labor practice described above in paragraph 10 by removing the unlawful no-solicitation

rule from the AutoNation Associate Handbook, and posting a notice at all automobile dealership locations of Respondent AutoNation in the United States. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be received by this office **on or before April 14, 2010, or postmarked on or before April 13, 2010**. Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at http://www.nlrb.gov, click on **E-Gov**, then click on the **E-Filing** link and then follow the directions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the documents need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf

file containing the required signature, then the E-Filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT commencing on **May 3, 2010**, at 10:00 a.m., and on consecutive days thereafter until concluded, at a location to be determined in the vicinity of Orlando, Florida, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondents and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED at Tampa, Florida, this 31st day of March, 2010.

Rochelle Kentov

Rochelle Kentov, Regional Director
National Labor Relations Board, Region 12
201 East Kennedy Boulevard, Suite 530
Tampa, Florida 33602-5824

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12

CONTEMPORARY CARS, INC. D/B/A MERCEDES-BENZ OF ORLANDO AND AUTONATION, INC., SINGLE AND JOINT EMPLOYERS	Charge Nos.	12-CA-26126
		12-CA-26233
and		12-CA-26306
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO		12-CA-26354
		12-CA-26386
		12-CA-26552

RESPONDENT CONTEMPORARY CARS, INC. D/B/A MERCEDES-BENZ OF ORLANDO'S AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO THE AMENDED CONSOLIDATED COMPLAINT

Comes now Respondent CONTEMPORARY CARS, INC. D/B/A MERCEDES-BENZ OF ORLANDO ("MBO"), by and through undersigned Counsel, and, pursuant to Section 102.23 of the Board's Rules and Regulations, as amended, timely files the following Amended Answer and Affirmative Defenses to the Amended Consolidated Complaint ("Complaint") issued by the Regional Director on June 8, 2010.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

To the extent that the Complaint encompasses any allegations occurring more than six months prior to the filing of an underlying charge with the National Labor Relations Board (NLRB) and the service of such charge upon MBO, such allegations are time-barred by Section 10(b) of the National Labor Relations Act, as amended (hereinafter "NLRA").

SECOND DEFENSE

The Complaint fails to give MBO fair and adequate notice of the charges against it and thereby denies MBO its right to due process under the U.S. Constitution, its right to notice of the charges under Section 10 of the NLRA, and its right to notice and a fair hearing under the Board's Rules and Regulations.

THIRD DEFENSE

The Complaint is invalid to the extent that any alleged agents of MBO committed acts that are ultimately determined to be outside the scope of their employment, or to the extent that they were never directed, authorized, or permitted thereby.

FOURTH DEFENSE

The Complaint is invalid to the extent that it fails to state a claim upon which relief may be granted.

FIFTH DEFENSE

All allegations of discriminatory treatment are invalid to the extent that any alleged discriminatee would have been treated in precisely the same manner in the absence of any alleged improper animus.

SIXTH DEFENSE

The Region's investigation establishes that MBO had a valid economic justification for laying off the alleged discriminatees named in Paragraphs 41(a) through 41(c) of the Complaint.

SEVENTH DEFENSE

The Complaint is invalid to the extent that that General Counsel has pled legal conclusions rather than required factual allegations.

EIGHTH DEFENSE

The group of MBO employees composing the unit for which the Union was certified as the exclusive bargaining representative is an inappropriate unit for collective bargaining, and said certification is presently under challenge before the U.S. Court of Appeals.

NINTH DEFENSE

There has not been a proper resolution of MBO's Request for Review of the Region's determination on the appropriateness of the voting unit in Case No. 12-RC-9344. The December 15, 2008 order denying Respondent's December 5, 2008 Request for Review is illegitimate and carries no weight, because the two-member panel that issued it lacked authority to do so. *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009).

TENTH DEFENSE

There has not been a proper resolution of Counsel for the General Counsel's Motion for Summary Judgment in Case No. 12-CA-26377. The August 28, 2009 Decision and Order granting Counsel for the General Counsel's July 13, 2009 Motion for Summary Judgment, found at 354 NLRB No. 72, is illegitimate and carries no weight, because the two-member panel that issued it lacked authority to do so. *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009).

ELEVENTH DEFENSE

To the extent that any alleged changes were made to the terms or conditions of employment, they were made in the ordinary course of business, and did not alter the course of business or the *status quo ante*.

TWELFTH DEFENSE

Supervisors and agents of MBO expressed only views, arguments, or opinions, containing no threat of reprisal, promise of benefits, or suggestion of surveillance. Such statements were protected in their entirety by Section 8(c) of the Act.

THIRTEENTH DEFENSE

The Complaint is invalid to the extent that it contains allegations that were not included within a timely-filed, pending unfair labor practice charge against MBO.

FOURTEENTH DEFENSE

The Complaint is barred by the doctrine of laches.

FIFTEENTH DEFENSE

Attorney Douglas R. Sullenberger is not an agent of MBO.

SIXTEENTH DEFENSE

The Complaint is invalid to the extent that it asserts frivolous claims against MBO, and actively mischaracterizes the facts known to General Counsel in an attempt to create a prejudicial distortion of the actual facts.

ANSWERS TO NUMBERED AND UNNUMBERED PARAGRAPHS

Responding to the initial unnumbered paragraphs of the Complaint, MBO denies that it has committed any unfair labor practices.

1. Responding to Paragraphs 1(a) through 1(o) of the Complaint, MBO admits that the charges and amendments were filed on the dates listed and that MBO has received them, but MBO has no knowledge as to the dates on which the Board placed them in the mail.
2. (a). Responding to Paragraph 2(a) of the Complaint, MBO admits the allegations contained therein.

   (b). Responding to Paragraph 2(b) of the Complaint, MBO admits the allegations contained therein.

   (c). Responding to Paragraph 2(c) of the Complaint, MBO admits the allegations contained therein.

3. (a). Responding to Paragraph 3(a) of the Complaint, MBO lacks sufficient information to admit or deny the allegations contained therein, and thus denies them.

(b). Responding to Paragraph 3(b) of the Complaint, MBO lacks sufficient information to admit or deny the allegations contained therein, and thus denies them.

(c). Responding to Paragraph 3(c) of the Complaint, MBO lacks sufficient information to admit or deny the allegations contained therein, and thus denies them.

4. (a) Responding to Paragraph 4(a) of the Complaint, MBO admits that, with respect to the events covered by the Complaint, it and AutoNation are affiliated business enterprises, that it and AutoNation share common ownership, that it and AutoNation have formulated and administered a common labor policy, and that it and AutoNation have provided services for and made sales to each other. MBO denies that it and AutoNation share common officers, directors, or management, that it and AutoNation have common supervision, that it and AutoNation share common premises and facilities, that it and AutoNation have interchanged personnel with each other, or that it and AutoNation have held themselves out to the public as single-integrated business enterprises.

(b) Responding to Paragraph 4(b) of the Complaint, MBO admits that, taken together and as applied to the facts of this case, the admissions made in Paragraph 4(a) of this Answer indicate that MBO and AutoNation constitute a single integrated enterprise and a single employer. MBO further admits that it and AutoNation are jointly liable to remedy unfair labor practices found by the NLRB with respect to the allegations contained in the Complaint, if any such determinations are made. MBO makes this admission of single integrated enterprise and single employer status with the recognition that MBO denies that it and AutoNation shared or will share the same relationship with respect to events or

circumstances occurring prior to or after the time period covered by the allegations made in the Complaint. MBO makes the preceding admissions responding to Paragraphs 4(a) and 4(b) of the Complaint with the recognition that those admissions (1) are limited without exception to the allegations made in the Complaint and made solely for purposes of this Complaint and (2) are not indicative, conclusive, or determinative of any other single integrated enterprise or single employer analysis whatsoever, regardless of context, involving or relating to AutoNation or any of its officers, directors, employees, agents, parent corporation(s), subsidiary corporation(s), wholly owned companies, affiliates and divisions. Furthermore, MBO states that the preceding admissions do not constitute binding admissions for any other purpose other than with respect to the allegations contained in the Complaint, including pending and future Board proceedings involving either MBO or AutoNation or both, and MBO will challenge the admissibility of the preceding admissions in any other forum or proceeding.

5. (a) Responding to Paragraph 5(a) of the Complaint, MBO denies the allegations contained therein.

(b) Responding to Paragraph 5(b) of the Complaint, MBO admits that, with respect to the events covered by the Complaint, AutoNation has possessed and exercised measures of control over the labor relations policy at MBO, and that, to the extent AutoNation's relationship with MBO in this case can be described as a "common labor policy," such "common labor policy" was jointly administered by it and AutoNation.

(c) Responding to Paragraph 5(c) of the Complaint, MBO admits that, taken together and as applied to the facts of this case, the admissions made in Paragraph 5(b) of this Answer indicate that MBO and AutoNation are joint employers of the technicians

working at MBO. MBO further admits that it and AutoNation are jointly liable to remedy unfair labor practices found by the NLRB with respect to the allegations contained in the Complaint, if any such determinations are made. MBO makes this admission that it and AutoNation jointly employ the technicians working at MBO with the recognition that MBO denies that it and AutoNation shared or will share the same relationship with respect to events or circumstances occurring prior to or after the time period covered by the allegations made in the Complaint. MBO makes the preceding admissions responding to Paragraphs 5(b) and 5(c) of the Complaint with the recognition that those admissions (1) are limited without exception to the allegations made in the Complaint and made solely for purposes of this Complaint and (2) are not indicative, conclusive, or determinative of any other joint employer analysis whatsoever, regardless of context, involving or relating to AutoNation or any of its officers, directors, employees, agents, parent corporation(s), subsidiary corporation(s), wholly owned companies, affiliates and divisions. Furthermore, MBO states that the preceding admissions do not constitute binding admissions for any other purpose other than with respect to the allegations contained in the Complaint, including pending and future Board proceedings involving either MBO or AutoNation or both, and MBO will challenge the admissibility of the preceding admissions in any other forum or proceeding.

6. Responding to Paragraph 6 of the Complaint, MBO admits the allegations contained therein.

7. (a) Responding to Paragraph 7(a) of the Complaint, MBO admits that Berryhill, Bullock, Makin, Menendez, and Miller have at times held the positions listed opposite their names and have at times been agents and supervisors of MBO within the meaning of

NLRA, but denies that they held such positions and were agents and supervisors of MBO within the meaning of the NLRA "at all material times," as that term is not defined in the Complaint. MBO admits, upon information and belief, that Bickram and DeVita have at times held the positions listed opposite their names and have at times been agents and supervisors of Respondent AutoNation within the meaning of the NLRA, but denies that they held such positions and were agents and supervisors within the meaning of the NLRA "at all material times," as that term is not defined in the Complaint. MBO denies that Bickram and DeVita acted as supervisors over MBO employees at any time.

(b) Responding to Paragraph 7(b) of the Complaint, MBO admits, upon information and belief, that Bonavia at times and until December 31, 2009 held the position ascribed to her in the Complaint and that she was at times an agent and supervisor of Respondent AutoNation, but denies that she held such position and was an agent and supervisor "at all material times," as that term is not defined in the Complaint. MBO denies that Bonavia acted as a supervisor over MBO employees at any time.

(c) Responding to Paragraph 7(c) of the Complaint, MBO admits that Grobler and Manbahal at times and until early to mid-December 2008 held the positions listed opposite their names and were agents and supervisors of MBO within the meaning of the NLRA, but denies that they held such positions and were agents and supervisors of MBO within the meaning of the NLRA "at all material times," as that term is not defined in the Complaint.

(d) Responding to Paragraph 7(d) of the Complaint, MBO admits that Aviles and Strong at times since early to mid-December 2008 held the positions listed opposite their names and were agents and supervisors of MBO within the meaning of the NLRA, but

denies that they held such positions and were agents and supervisors of MBO within the meaning of the NLRA "at all material times," as that term is not defined in the Complaint.

8. Responding to Paragraph 8 of the Complaint, MBO admits that Weiss held the position ascribed to him until April 4, 2009, but denies that he held that position "at all material times," as that term is not defined in the Complaint. MBO denies that Weiss was at any time its agent within the meaning of the NLRA. Upon information and belief, MBO denies that Weiss was at any time an agent of Respondent AutoNation.

9. (a) Responding to Paragraph 9(a) of the Complaint, MBO denies the allegations contained therein.

(b) Responding to Paragraph 9(b) of the Complaint, MBO admits that a majority of the segment of employees referred to in the Complaint as "the Unit," which is a group of employees that is inappropriate for bargaining under Section 9(b) of the NLRA, voted in favor of the Union on December 16, 2008. MBO also admits that the Regional Director improperly certified the Union as the exclusive bargaining representative of "the Unit" on February 11, 2009. MBO denies all remaining allegations in Paragraph 9(b) of the Complaint.

(c) Responding to Paragraph 9(c) of the Complaint, MBO denies the allegations contained therein.

(d) Responding to Paragraph 9(d) of the Complaint, MBO avers that the Board's decision reported at 354 NLRB No. 72 speaks for itself.

(e) Responding to Paragraph 9(e) of the Complaint, MBO admits the allegations contained therein.

10. Responding to Paragraph 10 of the Complaint, MBO admits that the AutoNation Associate Handbook contains the quoted language and that it has been distributed to MBO employees. MBO avers that the quoted language has not been enforced as written. MBO lacks knowledge or information sufficient to form a belief as to the extent to which the AutoNation Associate Handbook is used or has been used at other dealerships, and thus denies the remaining allegations set forth in Paragraph 10 of the Complaint.

11. Responding to Paragraph 11 of the Complaint, MBO denies the allegations contained therein.

12. Responding to Paragraph 12 of the Complaint, MBO admits only that, on or about September 25, 2008, Berryhill solicited grievances from employees. MBO denies the remaining allegations contained therein, as they state only conclusions of law, not assertions of fact, and do not require a response.

13. Responding to Paragraphs 13(a) and (b) of the Complaint, MBO denies the allegations contained therein.

14. Responding to Paragraph 14 of the Complaint, MBO denies the allegations contained therein.

15. Responding to Paragraphs 15(a) through (g) of the Complaint, MBO denies the allegations contained therein.

16. Responding to Paragraph 16 of the Complaint, MBO denies the allegations contained therein.

17. Responding to Paragraphs 17(a) through (d) of the Complaint, MBO denies the allegations contained therein.

18. Responding to Paragraphs 18(a) and (b) of the Complaint, MBO denies the allegations contained therein.

19. Responding to Paragraph 19 of the Complaint, MBO denies the allegations contained therein.

20. Responding to Paragraph 20 of the Complaint, MBO denies the allegations contained therein.

21. Responding to Paragraph 21 of the Complaint, MBO denies the allegations contained therein.

22. Responding to Paragraph 22 of the Complaint, MBO denies the allegations contained therein.

23. Responding to Paragraph 23(a) and (b) of the Complaint, MBO denies the allegations contained therein.

24. Responding to Paragraphs 24(a) and (b) of the Complaint, MBO denies the allegations contained therein.

25. Responding to Paragraph 25 of the Complaint, MBO denies the allegations contained therein.

26. Responding to Paragraph 26(a) through (c) of the Complaint, MBO denies the allegations contained therein.

27. Responding to Paragraph 27 of the Complaint, MBO denies the allegations contained therein.

28. Responding to Paragraph 28 of the Complaint, MBO denies the allegations contained therein.

29. Responding to Paragraph 29 of the Complaint, MBO denies the allegations contained therein.

30. Responding to Paragraph 30 of the Complaint, MBO denies the allegations contained therein.

31. Responding to Paragraphs 31(a) through (f) of the Complaint, MBO denies the allegations contained therein.

32. Responding to Paragraphs 32(a) and (b) of the Complaint, MBO denies the allegations contained therein.

33. Responding to Paragraph 33 of the Complaint, MBO denies the allegations contained therein.

34. Responding to Paragraph 34 of the Complaint, MBO denies the allegations contained therein.

35. Responding to Paragraph 35 of the Complaint, MBO denies the allegations contained therein.

36. Responding to Paragraphs 36(a) and (b) of the Complaint, MBO denies the allegations contained therein.

37. Responding to Paragraph 37 of the Complaint, MBO denies the allegations contained therein.

38. Responding to Paragraph 38 of the Complaint, MBO denies the allegations contained therein.

39. Responding to Paragraph 39 of the Complaint, MBO denies the allegations contained therein.

40. Responding to Paragraphs 40(a) and (b) of the Complaint, MBO denies the allegations contained therein.

41. (a) Responding to Paragraph 41(a) of the Complaint, MBO admits that, on or about December 8, 2008, Anthony Roberts was discharged.

(b) Responding to Paragraph 41(b) of the Complaint, MBO admits that, on or about April 2, 2009, Juan Cazorla was discharged.

(c) Responding to Paragraph 41(c) of the Complaint, MBO admits that, on or about April 3, 2009, David Poppo, Tumeshwar "John" Persaud, and Larry Puzon were discharged.

(d) Responding to Paragraph 41(d) of the Complaint, MBO denies the allegations contained therein.

(e) Responding to Paragraph 41(e) of the Complaint, MBO denies the allegations contained therein.

(f) Responding to Paragraph 41(f) of the Complaint, MBO denies the allegations contained therein.

(g) Responding to Paragraph 41(g) of the Complaint, MBO denies the allegations contained therein.

42. (a) Responding to Paragraph 42(a) of the Complaint, MBO denies the allegations contained therein.

(b) Responding to Paragraph 42(b) of the Complaint, MBO admits that Catalano was issued a "documented coaching" on or about October 13, 2009.

(c) Responding to Paragraph 42(c) of the Complaint, MBO denies the allegations contained therein.

43. Responding to Paragraphs 43(a) through (e) of the Complaint, MBO denies the allegations contained therein.

44. Responding to Paragraph 44 of the Complaint, no response is necessary, because the Paragraph contains only conclusions of law, and no allegations of fact. To the extent a response is necessary, MBO denies the allegations contained therein.

45. Responding to Paragraph 45 of the Complaint, MBO avers that it did not engage in the conduct alleged in Paragraphs 43(a) through 43(e) of the Complaint, and therefore, to the extent that any response is necessary to the allegations in Paragraph 45 that relate to Paragraphs 43(a) through (e), MBO denies those allegations. With respect to the discharges of Cazorla, Poppo, Persaud, and Puzon as alleged and admitted in Paragraphs 41(b) and 41(c) of the Complaint, MBO admits the allegations contained in Paragraph 45 of the Complaint, and MBO avers that it was under no duty to undertake any of those actions.

46. Responding to Paragraph 46 of the Complaint, MBO admits the allegations contained therein. Further, MBO avers that the Union was not lawfully entitled to the information it requested.

47. Responding to Paragraph 47 of the Complaint, MBO denies the allegations contained therein.

48. Responding to Paragraph 48 of the Complaint, MBO admits the allegations contained therein, and MBO avers that it was under no duty to provide the information requested, because, among other reasons, the Regional Director's certification of the Union as the exclusive bargaining representative for a segment of MBO employees was improper.

49. Responding to Paragraph 49 of the Complaint, MBO denies the allegations contained therein.

50. Responding to Paragraph 50 of the Complaint, MBO denies the allegations contained therein.

51. Responding to Paragraph 51 of the Complaint, MBO denies the allegations contained therein.

52. Responding to Paragraph 52 of the Complaint, MBO denies the allegations contained therein.

Responding to the unnumbered WHEREFORE clause in the Complaint, MBO denies that the Counsel for the General Counsel is entitled to any of the relief sought therein. Any allegations not expressly admitted are hereby denied.

WHEREFORE, having fully answered the Complaint, MBO prays that it be dismissed, or in the alternative, that Counsel for the General Counsel be held to strict proof of all allegations not specifically admitted.

Respectfully submitted this 14th day of June, 2010.

/s/ Brian M. Herman
DOUGLAS R. SULLENBERGER
STEVEN M. BERNSTEIN
BRIAN M. HERMAN
For FISHER & PHILLIPS LLP
COUNSEL FOR RESPONDENT
CONTEMPORARY CARS, INC. D/B/A
MERCEDES-BENZ OF ORLANDO

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2010, I e-filed the foregoing RESPONDENT CONTEMPORARY CARS, INC. D/B/A MERCEDES-BENZ OF ORLANDO'S AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO AMENDED CONSOLIDATED COMPLAINT using the Board's e-filing system and that it was served by Federal Express on the following:

David Porter
100 Bent Tree Drive, Apt. 110
Daytona Beach, FL 32114

Christopher T. Corsen
General Counsel
International Association of Machinists
and Aerospace Workers, AFL-CIO
9000 Machinists Place, Room 202
Upper Marlboro, MD 20772

/s/ Brian M. Herman
DOUGLAS R. SULLENBERGER
STEVEN M. BERNSTEIN
BRIAN M. HERMAN
For FISHER & PHILLIPS LLP
COUNSEL FOR RESPONDENT
CONTEMPORARY CARS, INC. D/B/A
MERCEDES-BENZ OF ORLANDO

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12

CONTEMPORARY CARS, INC. D/B/A MERCEDES-BENZ OF ORLANDO AND AUTONATION, INC., SINGLE AND JOINT EMPLOYERS		
and	Charge Nos.	12-CA-26126 12-CA-26233 12-CA-26306
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO		12-CA-26354 12-CA-26386 12-CA-26552

RESPONDENT AUTONATION, INC'S AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO AMENDED CONSOLIDATED COMPLAINT

Comes now Respondent AUTONATION, INC. ("AutoNation"), by and through undersigned Counsel, and, pursuant to Section 102.23 of the Board's Rules and Regulations, as amended, timely files the following Amended Answer and Affirmative Defenses to the Amended Consolidated Complaint ("Complaint") issued by the Regional Director on June 8, 2010.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

To the extent that the Complaint encompasses any allegations occurring more than six months prior to the filing of an underlying charge with the National Labor Relations Board (NLRB) and the service of such charge upon AutoNation, such allegations are time-barred by Section 10(b) of the National Labor Relations Act, as amended (hereinafter "NLRA").

SECOND DEFENSE

The Complaint fails to give AutoNation fair and adequate notice of the charges against it and thereby denies AutoNation its right to due process under the U.S. Constitution, its right to

notice of the charges under Section 10 of the NLRA, and its right to notice and a fair hearing under the Board's Rules and Regulations.

THIRD DEFENSE

The Complaint is invalid to the extent that any alleged agents of AutoNation committed acts that are ultimately determined to be outside the scope of their employment, or to the extent that they were never directed, authorized, or permitted thereby.

FOURTH DEFENSE

The Complaint is invalid to the extent that it fails to state a claim upon which relief may be granted.

FIFTH DEFENSE

All allegations of discriminatory treatment are invalid to the extent that any alleged discriminatee would have been treated in precisely the same manner in the absence of any alleged improper animus.

SIXTH DEFENSE

The Region's investigation establishes that MBO had a valid economic justification for laying off the alleged discriminatees named in Paragraphs 41(a) through 41(c) of the Complaint.

SEVENTH DEFENSE

The Complaint is invalid to the extent that that General Counsel has pled legal conclusions rather than required factual allegations.

EIGHTH DEFENSE

The group of MBO employees composing the unit for which the Union was certified as the exclusive bargaining representative is an inappropriate unit for collective bargaining, and said certification is presently under challenge before the U.S. Court of Appeals.

NINTH DEFENSE

There has not been a proper resolution of MBO's Request for Review of the Region's determination on the appropriateness of the voting unit in Case No. 12-RC-9344. The December 15, 2008 order denying Respondent's December 5, 2008 Request for Review is illegitimate and carries no weight, because the two-member panel that issued it lacked authority to do so. *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009).

TENTH DEFENSE

There has not been a proper resolution of Counsel for the General Counsel's Motion for Summary Judgment in Case No. 12-CA-26377. The August 28, 2009 Decision and Order granting Counsel for the General Counsel's July 13, 2009 Motion for Summary Judgment, found at 354 NLRB No. 72, is illegitimate and carries no weight, because the two-member panel that issued it lacked authority to do so. *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009).

ELEVENTH DEFENSE

To the extent that any alleged changes were made to the terms or conditions of employment, they were made in the ordinary course of business, and did not alter the course of business or the *status quo ante*.

TWELFTH DEFENSE

Supervisors and agents of AutoNation expressed only views, arguments, or opinions, containing no threat of reprisal, promise of benefits, or suggestion of surveillance. Such statements were protected in their entirety by Section 8(c) of the Act.

THIRTEENTH DEFENSE

The Complaint is invalid to the extent that it contains allegations that were not included in a timely-filed, pending unfair labor practice charge against AutoNation.

FOURTEENTH DEFENSE

The Complaint is barred by the doctrine of laches.

FIFTEENTH DEFENSE

Attorney Douglas R. Sullenberger is not an agent of AutoNation.

SIXTEENTH DEFENSE

The Complaint is invalid to the extent that it asserts frivolous claims against AutoNation, and actively mischaracterizes the facts known to General Counsel in an attempt to create a prejudicial distortion of the actual facts.

ANSWERS TO NUMBERED AND UNNUMBERED PARAGRAPHS

Responding to the initial unnumbered paragraphs of the Complaint, AutoNation denies that it has committed any unfair labor practices.

1. Responding to Paragraphs 1(a) through 1(o) of the Complaint, AutoNation admits that the charges and amendments were filed on the dates listed and that AutoNation has received them, but AutoNation has no knowledge as to the dates on which the Board placed them in the mail.

2. (a). Responding to Paragraph 2(a) of the Complaint, upon information and belief, AutoNation admits the allegations contained therein.

   (b). Responding to Paragraph 2(b) of the Complaint, upon information and belief, AutoNation admits the allegations contained therein.

   (c). Responding to Paragraph 2(c) of the Complaint, upon information and belief, AutoNation admits the allegations contained therein.

3. (a). Responding to Paragraph 3(a) of the Complaint, AutoNation admits that it is a Delaware corporation, admits that it is headquartered in Fort Lauderdale, denies that its

business takes place anywhere other than in Fort Lauderdale, and denies that its business is as described in the Complaint.

(b). Responding to Paragraph 3(b) of the Complaint, AutoNation admits that during the last 12 months, it met the jurisdictional thresholds alleged, but denies that it did so in conducting business as described Paragraph 3(a) of the Complaint.

(c). Responding to Paragraph 3(c) of the Complaint, AutoNation admits the allegations contained therein.

4. (a) Responding to Paragraph 4(a) of the Complaint, AutoNation admits that, with respect to the events covered by the Complaint, it and MBO are affiliated business enterprises, that it and MBO share common ownership, that it and MBO have formulated and administered a common labor policy, and that it and MBO have provided services for and made sales to each other. AutoNation denies that it and MBO share common officers, directors, or management, that it and MBO have common supervision, that it and MBO share common premises and facilities, that it and MBO have interchanged personnel with each other, or that it and MBO have held themselves out to the public as single-integrated business enterprises.

(b) Responding to Paragraph 4(b) of the Complaint, AutoNation admits that, taken together and as applied to the facts of this case, the admissions made in Paragraph 4(a) of this Answer indicate that AutoNation and MBO constitute a single integrated enterprise and a single employer. AutoNation further admits that it and MBO are jointly liable to remedy unfair labor practices found by the NLRB with respect to the allegations contained in the Complaint, if any such determinations are made. AutoNation makes this admission of single integrated enterprise and single employer status with the recognition

that AutoNation denies that it and MBO shared or will share the same relationship with respect to events or circumstances occurring prior to or after the time period covered by the allegations made in the Complaint. AutoNation makes the preceding admissions responding to Paragraphs 4(a) and 4(b) of the Complaint with the recognition that those admissions (1) are limited without exception to the allegations made in the Complaint and made solely for purposes of this Complaint and (2) are not indicative, conclusive, or determinative of any other single integrated enterprise or single employer analysis whatsoever, regardless of context, involving or relating to AutoNation or any of its officers, directors, employees, agents, parent corporation(s), subsidiary corporation(s), wholly owned companies, affiliates and divisions. Furthermore, AutoNation states that the preceding admissions do not constitute binding admissions for any other purpose other than with respect to the allegations contained in the Complaint, including pending and future Board proceedings involving either MBO or AutoNation or both, and AutoNation will challenge the admissibility of the preceding admissions in any other forum or proceeding.

5. (a) Responding to Paragraph 5(a) of the Complaint, AutoNation denies the allegations contained therein.

(b) Responding to Paragraph 5(b) of the Complaint, AutoNation admits that, with respect to the events covered by the Complaint, it has possessed and exercised measures of control over the labor relations policy at MBO, and that, to the extent its relationship with MBO in this case can be described as a "common labor policy," such "common labor policy" was jointly administered by it and MBO.

(c) Responding to Paragraph 5(c) of the Complaint, AutoNation admits that, taken together and as applied to the facts of this case, the admissions made in Paragraph 5(b) of this Answer indicate that MBO and AutoNation are joint employers of the technicians working at MBO. AutoNation further admits that it and MBO are jointly liable to remedy unfair labor practices found by the NLRB with respect to the allegations contained in the Complaint, if any such determinations are made. AutoNation makes this admission that it and MBO jointly employ the technicians working at MBO with the recognition that AutoNation denies that it and MBO shared or will share the same relationship with respect to events or circumstances occurring prior to or after the time period covered by the allegations made in the Complaint. AutoNation makes the preceding admissions responding to Paragraphs 5(b) and 5(c) of the Complaint with the recognition that those admissions (1) are limited without exception to the allegations made in the Complaint and made solely for purposes of this Complaint and (2) are not indicative, conclusive, or determinative of any other joint employer analysis whatsoever, regardless of context, involving or relating to AutoNation or any of its officers, directors, employees, agents, parent corporation(s), subsidiary corporation(s), wholly owned companies, affiliates and divisions. Furthermore, AutoNation states that the preceding admissions do not constitute binding admissions for any other purpose other than with respect to the allegations contained in the Complaint, including pending and future Board proceedings involving either MBO or AutoNation or both, and AutoNation will challenge the admissibility of the preceding admissions in any other forum or proceeding.

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31. Responding to Paragraphs 31(a) through (f) of the Complaint, AutoNation denies the allegations contained therein.

32. Responding to Paragraphs 32(a) and (b) of the Complaint, AutoNation denies the allegations contained therein.

33. Responding to Paragraph 33 of the Complaint, AutoNation denies the allegations contained therein.

34. Responding to Paragraph 34 of the Complaint, AutoNation denies the allegations contained therein.

35. Responding to Paragraph 35 of the Complaint, AutoNation denies the allegations contained therein.

36. Responding to Paragraphs 36(a) and (b) of the Complaint, AutoNation denies the allegations contained therein.

37. Responding to Paragraph 37 of the Complaint, AutoNation denies the allegations contained therein.

38. Responding to Paragraph 38 of the Complaint, AutoNation denies the allegations contained therein.

39. Responding to Paragraph 39 of the Complaint, AutoNation denies the allegations contained therein.

40. Responding to Paragraphs 40(a) and (b) of the Complaint, AutoNation denies the allegations contained therein.

41. (a) Responding to Paragraph 41(a) of the Complaint, AutoNation, upon information and belief, admits that, on or about December 8, 2008, MBO discharged Anthony Roberts.

(b) Responding to Paragraph 41(b) of the Complaint, AutoNation, upon information and belief, admits that, on or about April 2, 2009, MBO discharged Juan Cazorla.

(c) Responding to Paragraph 41(c) of the Complaint, AutoNation, upon information and belief, admits that, on or about April 3, 2009, MBO discharged David Poppo, Tumeshwar "John" Persaud, and Larry Puzon.

(d) Responding to Paragraph 41(d) of the Complaint, AutoNation denies the allegations contained therein.

(e) Responding to Paragraph 41(e) of the Complaint, AutoNation denies the allegations contained therein.

(f) Responding to Paragraph 41(f) of the Complaint, AutoNation denies the allegations contained therein.

(g) Responding to Paragraph 41(g) of the Complaint, AutoNation denies the allegations contained therein.

42. (a) Responding to Paragraph 42(a) of the Complaint, AutoNation denies the allegations contained therein.

(b) Responding to Paragraph 42(b) of the Complaint, AutoNation, upon information and belief, admits that Catalano was issued a "documented coaching" on or about October 13, 2009.

(c) Responding to Paragraph 42(c) of the Complaint, AutoNation denies the allegations contained therein.

43. (a) Responding to Paragraph 43(a), AutoNation denies the allegations contained therein.

(b) Responding to Paragraph 43(b), the allegations contained therein do not pertain to AutoNation, and therefore no response is necessary. To the extent that a response is required, AutoNation denies the allegations contained therein upon information and belief.

(c) Responding to Paragraph 43(c), the allegations contained therein do not pertain to AutoNation, and therefore no response is necessary. To the extent that a response is required, AutoNation denies the allegations contained therein upon information and belief.

(d) Responding to Paragraph 43(d), the allegations contained therein do not pertain to AutoNation, and therefore no response is necessary. To the extent that a response is required, AutoNation denies the allegations contained therein upon information and belief.

(e) Responding to Paragraph 43(e), the allegations contained therein do not pertain to AutoNation, and therefore no response is necessary. To the extent that a response is

required, AutoNation denies the allegations contained therein upon information and belief.

44. Responding to Paragraph 44 of the Complaint, no response is necessary, because the Paragraph contains only conclusions of law, and no allegations of fact. To the extent a response is necessary, AutoNation denies the allegations contained therein.

45. Responding to Paragraph 45, the allegations contained therein do not pertain to AutoNation, and therefore no response is necessary. To the extent that a response is required, AutoNation denies the allegations contained therein and avers that, upon information and belief, MBO was under no duty to undertake any of those actions.

46. Responding to Paragraph 46 of the Complaint, AutoNation admits the allegations contained therein. Further, AutoNation avers that the Union was not lawfully entitled to the information it requested.

47. Responding to Paragraph 47 of the Complaint, AutoNation denies the allegations contained therein.

48. Responding to Paragraph 48, the allegations contained therein do not pertain to AutoNation, and therefore no response is necessary. To the extent that a response is required, upon information and belief, AutoNation admits the allegations contained therein, and AutoNation avers that MBO was under no duty to provide the information requested, because, among other reasons, the Regional Director's certification of the Union as the exclusive bargaining representative for a segment of MBO employees was improper.

49. Responding to Paragraph 49 of the Complaint, AutoNation denies the allegations contained therein.

50. Responding to Paragraph 50 of the Complaint, AutoNation denies the allegations contained therein.

51. Responding to Paragraph 51 of the Complaint, AutoNation denies the allegations contained therein.

52. Responding to Paragraph 52 of the Complaint, AutoNation denies the allegations contained therein.

Responding to the unnumbered WHEREFORE clause in the Complaint, AutoNation denies that the Counsel for the General Counsel is entitled to any of the relief sought therein. Any allegations not expressly admitted are hereby denied.

WHEREFORE, having fully answered the Complaint, AutoNation prays that it be dismissed, or in the alternative, that Counsel for the General Counsel be held to strict proof of all allegations not specifically admitted.

Respectfully submitted this 14th day of June, 2010.

/s/ Brian M. Herman
DOUGLAS R. SULLENBERGER
STEVEN M. BERNSTEIN
BRIAN M. HERMAN
For FISHER & PHILLIPS LLP
COUNSEL FOR RESPONDENT
AUTONATION, INC.

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2010, I e-filed the foregoing RESPONDENT AUTONATION, INC.'S AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO AMENDED CONSOLIDATED COMPLAINT using the Board's e-filing system and that it was served by Federal Express on the following:

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100 Bent Tree Drive, Apt. 110
Daytona Beach, FL 32114

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General Counsel
International Association of Machinists
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